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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,164	01/13/2004	Elliot A. Gottfurcht	4346P001X4	3554

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EXAMINER

COBURN, CORBETT B

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

28

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/757,164	Applicant(s) GOTTFURCHT, ELLIOT A.	
	Examiner Corbett B. Coburn	Art Unit 3714	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,3-9,11-14,16 and 17.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See attached.

DETAILED ACTION

Drawings

1. The drawings are objected to because of the issues noted on the attached Notice of Draftsperson's Patent Drawing Review. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-5, 7-9, 11-14, 16 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xidos in view of Handelman et al. (US Patent Number 6,312,336).

Claims 1, 9, 14: Xidos teaches displaying a web based game and receiving control input for the game from a television remote control. (Abstract) Xidos teaches that the network used the Internet protocol, therefore the games are web-based. (Col 3, 17-20) The network described by Xidos is either the Internet or its equivalent.

Xidos teaches displaying a set of game control options (i.e., game selection, betting and game play inputs), but does not specifically teach displaying a set of game control options in a matrix format. The arrangement of the game control options on the screen is a matter of aesthetic design choice for which no stated problem is solved, or unexpected result obtained, by using the specific arrangement of controls on the screen claimed versus the arrangement of controls on the screen taught by the prior art. Furthermore, matters of aesthetic design cannot patentability distinguish over the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). Be that as it may, however, Handelman explicitly teaches displaying a set of game control options in a matrix format. (Figs 2A-E) Arranging control options in a matrix format makes them easier to find and understand. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Xidos in view of Handelman to display a set of game control options in a matrix format in order to make them easier to find and understand.

Claims 3, 16: Xidos inherently teaches displaying the set of web-based games as navigation options. The player must have a means of choosing the game. Presumably,

these navigation options could be more complex than they are, so they are “simplified” by comparison to some hypothetical “convoluted” navigation interface.

Claims 4, 13, 17: Xidos teaches receiving control input from a second television remote control. Fig 2 shows a large number of rooms (50) that may participate in playing the game. In each case, the input is provided by a remote control. Thus there is at least a second remote control providing input.

Claims 5, 11: The game is a gambling game. (Abstract)

Claim 7: Xidos teaches providing a game matching service to a user – the user chooses a game and is matched to that game.

Claim 8: The game control input in Xidos is considered to be unique input – it is provided by each person and will, therefore, be unique to that individual.

Claim 12: Xidos teaches displaying the game remotely at a second location on a second television. Fig 2 shows a large number of rooms (50) that may participate in playing the game.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Xidos as applied to claim 1 above, and further in view of How to “Know When Your Buddies Are Online” (AOL, 1997).

Claim 6: Xidos teaches the invention substantially as claimed, but does not teach tracking the online status of a group of individuals designated by a user. Xidos teaches using Internet protocols as the basis for the disclosed system. (Col 3, 17-20) A chat feature is a well-known feature of the Internet. Providing a chat feature is known to foster a sense of camaraderie that increases the use of a gaming system. (See Falciglia

(US Patent Number 5,935,002) which is made of record but not relied upon.) As a part of providing a chat feature, it is well known to track the online status of a group of individuals designated by a user. AOL's Instant Messenger application implemented this not later than 1997. This allows the user to determine if the people he wants to chat with are available. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Xidos in view of the well known state of the art with regard to chat features (as described in "How to Know When Your Buddies Are Online") in order to allow the user to determine if the people he wants to chat with are available, thus fostering the chat feature that is known to attract players.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 3-5, 7-9, 11-14, 16 & 17 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant argues that Handelman fails to teach displaying game play control options in a matrix. In describing Figs 2A-D, Handelman clearly teaches displaying controls for the display of various aspects of games. These controls are game play control options. These options are clearly displayed in a matrix. In Fig 2A, element 225 is a 1X4 matrix of game control options. These are described as controls for allowing selections and operations of the software. (Col 9, 35-37) Handelman's disclosure implies displaying a game – it makes no sense to have controls for selecting and operating game software without then displaying the game. Furthermore, Xidos clearly teaches displaying a game. In combination, the references teach the claimed invention -- as detailed above.

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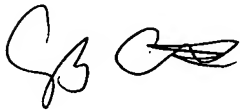
7. Applicant argues that it is inappropriate to say that the arrangement of the controls is a matter of design choice because some functionality can be had by adopting a specific arrangement. Applicant will notice that the obviousness rejection was made over Handelman and a reason for making the combination was put forth. While examiner believes that the arrangement of icons on the screen is a matter of design choice, he did not rely on this theory when making the rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571)272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



cbc

Chanda L. Harris
CHANDA L. HARRIS
PRIMARY EXAMINER